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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 696

WILLIAM A. DOSS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

A. M. FITZGERALD,
Counsel for Petitioner.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, William A. Doss, respectfully prays that the writ of certiorari issue to review a decision of the Supreme Court of the State of Illinois affirming the judgment and conviction of petitioner in the Circuit Court of Piatt County in the State of Illinois, of criminal libel, which said judgment of the Circuit Court of Piatt County, Illinois was, upon appeal, affirmed by the Appellate Court of the State of Illinois for the Third District, by which affirmance by the Supreme Court of the State of Illinois the sentence imposed upon the petitioner, by the Circuit Court of Piatt County, of six months in Piatt County jail and costs, was affirmed by the Supreme Court of the State of Illinois.

I.

Short Statement of the Case.

The petitioner was charged in an indictment containing two counts, with criminal libel, in the language of the Illinois Criminal Code, Section 402. Each count of the indictment in question is based upon certain charges contained in various issues of a newspaper edited, printed and distributed by the petitioner, and each count of the indictment contains attached to such count, copies of the matter charged as being libelous, of Carl I. Glasgow, the then State's Attorney of Piatt County, Illinois. The substance of such published articles is briefly abstracted below:

(A) *The First Count.*

The first count of the indictment charges, in the language of the Statute that the accused, Petitioner here, did maliciously publish a certain *false* statement against Carl I. Glasgow (states attorney), that he was not a fair and impartial prosecutor, or that he was either a persecutor or an unfair prosecutor, in (1) the *Muse* case, (2) in the *Ard* case he wrongfully shielded that man, (3) in the recent *Bell* case, he wrongfully fails to prosecute. The indictment further charges that the published statement charged Glasgow wrongfully bargains the dismissal of the *Bell* case, in order to get the Sheriff out of a bad civil damage suit; that the states attorney threatened to indict a witness in the *Muse* case if the defending attorney sought a new trial, and concluded with the statement that the States Attorney would have a hard time to save his commission if he were prosecuted for these various acts of malfeasance in his office.

(B) *The Second Count.*

The second count of the indictment is based upon the same published article as the first count, but selects as its

basis other statements made in such printed article. This second count charges that the accused (Petitioner here), did unlawfully print and publish certain libellous matters and more specifically that he, Doss, proposed to send a statement of the situation to the Governor and Attorney General of Illinois, to the Presidents of the State and Local Bar Associations, and further that if such a lying and deceitful man (meaning Carl I. Glasgow, States Attorney) can fill a States Attorney's office in Piatt County, then the rightful liberty and property of every citizen is in jeopardy who refuses to swear allegiance to the Monticello attorneys.

The only complaining witness endorsed upon the back of the indictment is Carl I. Glasgow (the States Attorney of Piatt County, Illinois).

(C) *The Pleadings.*

To such indictment the defendant (petitioner here) filed a motion and a first and second amendment thereto, to quash the same. The motion to quash being overruled, the accused pleaded not guilty; the accused also filed a motion for change of venue from Hon. W. S. Bodeman, one of the three judges of the Circuit Court of Piatt County. Such motion for change of venue was neither granted nor denied due to the fact that the three presiding judges of the said Court elected not to preside at the trial and Hon. James B. Bartley, a Circuit Judge from another Circuit Court was assigned to preside at said trial by the Supreme Court of the State of Illinois (Rec. 47-51, Abst. 20-22).

Following the trial the jury, after deliberating, returned a verdict of guilty as to the first count of the indictment and a verdict of not guilty as to the second count of the indictment. The accused (petitioner here) then made a motion for new trial, a motion to set aside the verdict and a mo-

tion in arrest of judgment, all of which motions were denied, whereupon the Court sentenced the petitioner to a term of six months in the Piatt County jail (Rec. 155, Abst. 69).

The defendant (petitioner here) having perfected an appeal to the Supreme Court of the State of Illinois, such Court believing that no constitutional question was involved and the crime charged not constituting a felony but a mere misdemeanor, transferred the cause to the Appellate Court for the Third District, which Court considered the cause on printed briefs and abstract, took the same under advisement until February 24, 1943, upon which date the Appellate Court rendered its opinion affirming the judgment, conviction and sentence of the Circuit Court of Piatt County. Timely petition for rehearing was filed and denied on May 4, 1943. On the 11th day of June, 1943 the petitioner sued out a writ of error in the Supreme Court of the State of Illinois directed to the Appellate Court, Third District, of Illinois to review the judgment of affirmance of said Appellate Court.

The Opinion of the Supreme Court of the State of Illinois.

Such writ of error from the Supreme Court of the State of Illinois to the Appellate Court having been duly perfected by the filing of the record of the Appellate Court, was by the Supreme Court of Illinois considered by that Court on printed briefs and arguments and taken under advisement until the 16th day of November, 1943, upon which date the Supreme Court of Illinois rendered its opinion affirming the record, judgment, and conviction of the accused by the Circuit Court of Piatt County, and affirmed the decision of the Appellate Court of Illinois for the Third District.

RE-HEARING.

No petition for rehearing was filed in the Supreme Court of Illinois, and the time therefor has elapsed.

II

Statement of Matters Involved and the Reasons Relied On for the Allowance of the Writ.

The discretionary power of the Court to grant writ of Certiorari is invoked on the following grounds:-

(First) The instant proceeding is a cause wherein the final judgment rendered by the Supreme Court of the State of Illinois (being the highest Court of the State in which a decision can be had) draws in question the validity of a statute of the State of Illinois, on the ground of its being repugnant to the Constitution and laws of the United States.

(Second) The instant proceeding involves a trial, right, privilege and immunity specifically set up and claimed by the defendant (Petitioner here) under the Constitution of the United States.

(Third) The decision of the Supreme Court of Illinois denies to the Petitioner the right of free speech and freedom of the press as defined and granted by the Constitution of the United States, Amendment I (Bill of Rights) and by the Constitution of the State of Illinois, Article II Sec. 4.

(Fourth) The decision of the Supreme Court of the State of Illinois discloses and is based upon a confusion and contradiction between the right of freedom of the press, as granted by the Federal Constitution, and the criminal action or prosecution for libel as defined and set forth in the Illinois Criminal Code—which latter code defines and punishes an act of publication in a manner and under circum-

stances prohibited by the United States Constitution.

(Fifth) The holding of the Supreme Court of Illinois renders nugatory the provisions of the Bill of Rights of the Federal Constitution granting to the Petitioner the *unabridged* freedom of speech and of the press.

(Sixth) The Illinois Criminal Code, in its definition and nature of defense permissible to the accused, reverses the common law burden of proof, in requiring the accused to prove the truth of the published matter, and freedom from malice. In all criminal proceedings, the burden of proof is upon the State, and failing in such proof, the accused is entitled to the presumption of innocence.

The holding of the Supreme Court of Illinois is in conflict with the decisions of the following cases:-

Harry Bridges vs. *State of California,* 314 U. S. 252 86 L. Ed. 192;
Lisenba vs. *California,* 314 U. S. 219, 86 L. Ed. 166;
Largent vs. *State of Texas,* 63 S. Ct. 667, 669 (No. 559 October term 1942 Opinion March 8, 1943);
City of Chicago vs. *Tribune Company,* 307 Ill. 595;
Young vs. *Lindstrom,* 115 Ill. App. 239;
Cooper vs. *Ill. Pub. & Printing Co.,* 218 Ill. App. 95.

Conclusion.

Wherefore Petitioner prays that the writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Illinois, commanding said court to certify and send to this Court, a full and complete transcript of the record and proceedings of said Supreme Court of Illinois had in the case numbered 27389 and entitled *People of the State of Illinois* vs. *William A. Doss,* to the end that the decision and judgment of the Supreme Court of Illinois may be reviewed and determined by this Court as provided by the laws of the United States; that the

judgment herein of the Supreme Court of Illinois be reversed by this Court and for such further relief as this Court may deem just and proper.

WILLIAM A. DOSS,
Petitioner.

A. M. FITZGERALD,
His Attorney.